

February 12, 2021

By ECF

Honorable Valerie E. Caproni  
United States District Judge  
Thurgood Marshall United States Courthouse  
40 Foley Square  
New York, NY 10007

Re: *National Audubon Society, et al. v. U.S. Fish & Wildlife Service, et al.*, 21-CV-0448 (VEC), and *State of New York, et al. v. U.S. Department of the Interior, et al.*, 21-CV-0452 (VEC)

Dear Judge Caproni:

The parties in the above-captioned cases jointly submit this letter in response to the Court's order of February 3, 2021. The parties agree that the cases "involve ... common question[s] of law [and] fact," Fed. R. Civ. P. 42(a), and should be consolidated under Federal Rule of Civil Procedure 42(a)(2). The States, however, respectfully request that they be permitted—as they were in the related earlier consolidated cases—to submit briefs separate from the Audubon Plaintiffs. *See, e.g., NRDC v. U.S. Dep't of the Interior*, 18-CV-4596 (VEC), ECF No. 55 (granting States' request to file separate briefing). Defendants do not oppose the States' request.

We thank the Court for its consideration of and attention to these matters.

Respectfully submitted,

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*On behalf of Audubon Plaintiffs*


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*On behalf of State Plaintiffs*

Because these cases involve common questions of law and fact, and because the parties do not oppose consolidation, the Court consolidates the actions pursuant to Rule 42(a)(2). The Court denies without prejudice the States' request that they be allowed to submit separate briefs in connection with further motion practice in the consolidated case. Whether separate briefs will be appropriate will depend on the type of briefing at issue, the degree to which Plaintiffs' positions vary, and the extent to which Plaintiffs' concerns regarding consolidated briefing can be alleviated through other accommodations. The States are instructed to renew their request for separate briefing to the extent they deem it necessary in connection with a given motion.

The Clerk of Court is respectfully directed to consolidate these two cases under docket number 21-CV-448 and to close 21-CV-452. All further submissions in this now-consolidated case must be filed under docket number 21-CV-448. All parties are instructed to join the April 2, 2021 IPTC at 10:30 a.m. As a reminder, the parties may dial-in to the teleconference using 888- 363-4749, Access code 3121171#, Security code 0448. The parties' joint letter and proposed Case Management Plan are due no later than March 25, 2021.

SO ORDERED.

 2/15/2021

HON. VALERIE CAPRONI  
UNITED STATES DISTRICT JUDGE